

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

RAMON VILLANUEVA-BAZALDUA )  
individually and on behalf of others similarly, )  
situated, )

Plaintiff, )

v. )

Civil Action No:

TRUGREEN LIMITED PARTNERS and, )  
TRUGREEN, INC. d/b/a TRUGREEN )  
CHEMLAWN )

Defendant.

COMPLAINT

1. This is an action for damages resulting from Defendants' violations of the Fair Labor Standards Act, 29 U.S.C. §201 et seq., breach of contract, fraud, and violation of the duty of good faith and fair dealing. Plaintiff seeks damages on behalf of himself and all other similarly situated H-2B workers employed by Defendants.

JURISDICTION

2. This Court has jurisdiction over Plaintiff's Fair Labor Standards Act (FLSA) claim pursuant to 29 U.S.C. §216(b) and 28 U.S.C. §1331 (federal question).

3. This Court has jurisdiction over Plaintiff's contract claim pursuant to 28 U.S.C. §1331 (federal question).

4. This Court has supplemental jurisdiction over Plaintiff's breach of contract, fraud, and violation of the duty of good faith and fair dealing claims pursuant to 28 U.S.C. §1367.

VENUE

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b), as a substantial part of the

events giving rise to this action occurred within this district and Defendants are located, reside, or do business in this district.

### PARTIES

6. Plaintiff Ramon Villanueva-Bazaldua is a resident of the Republic of Mexico.

7. Defendant TruGreen Limited Partners is a limited partnership organized under the laws of the State of Delaware. It may be served with process through its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware, 19801.

8. Defendant TruGreen, Inc. is a corporation organized under the laws of the State of Delaware. It is sued in its capacity as general partner of TruGreen Limited Partners. It may be served with process through its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware. 19801

### CLASS/COLLECTIVE ACTION ALLEGATIONS

9. Plaintiff brings his FLSA claims individually and as a collective action on behalf of a class defined as "all H-2B workers employed by Defendant TruGreen Limited Partners at any time between 2003 and 2006." Collective action treatment is appropriate because all members of the class are similarly situated with respect to Defendants' policy or practice of not taking into account the visa, processing, and transportation expenses incurred by H-2B workers in determining whether such workers received the wages required by the FLSA. Plaintiffs consent to sue form is attached to this complaint.

10. Plaintiff brings his breach of contract, fraud, and breach of the duty of good faith and fair dealing claims on behalf of himself and a class defined as "all H-2B workers employed by Defendant TruGreen Limited Partners at any time between 2003 and 2006." This class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class;

the claims of the named plaintiff are typical of the claims of the class; and the named plaintiff will fairly and adequately protect the interests of the class. Certification of the class pursuant to Rule 23(b)(3) is appropriate because the questions of law and fact common to the class predominate over any questions affecting only individual members of the class. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that the individual members of the class have no interest in controlling the prosecution of separate actions; on information and belief, no other litigation has been commenced by the members of the class; it is desirable and more efficient to concentrate the litigation of these claims in one forum; and, no difficulties are likely to be encountered in the management of the class action.

#### FACIS

11. At all times relevant herein, Defendants provided landscaping services to customers in Delaware, Pennsylvania, New Jersey and other states and operated as an 'enterprises engaged in commerce' as that phrase is defined in the FLSA, 28 U.S.C. §203(s).

12. Each year since at least 2003, Defendants have applied for permission to employ temporary foreign landscape workers pursuant to the federal governments H-2B visa program.

13. Each year, in order to obtain permission to employ workers under the H-2B program, Defendants submitted applications to the Department of Labor for certification of the need for temporary foreign workers ("labor certification") on forms ETA 750. In addition, Defendants submitted applications for H-2B visas to the Department of Citizenship and Immigration Services (CIS) on forms I-129.

14. In 2004, the forms ETA 750 and the forms I-129 filed by Defendants offered hourly wages of \$10/hour, \$15/hour overtime, and a work for the period March 1 through November 30, 2004.

15. On information and belief, the forms ETA 750 and forms I-129 filed by Defendants in 2003, 2005 and 2006 offered hourly wages at fixed dollar amount per hour and overtime equal to one and one-half times the stated hourly wage. On information and belief, the forms also offered work for the period March through November in each of those years.

16. Each year, in anticipation of receiving approval of their applications for H-2B visas, Defendants, through their agents, recruited workers in Mexico.

17. In 2004, Defendants, through their agent, LLS International S. de R.L. de C.V., recruited Plaintiff in Mexico with a promise \$11.34 per hour and an overtime rate of \$17.01 per hour. Defendants also represented to Plaintiff that he was required to work for the full term of the contract.

18. On information and belief, other Mexican H-2B workers recruited to work for Defendants in 2003, 2004, 2005 and 2006 were promised in Mexico that they would receive a fixed hourly rate of pay and overtime at one and one-half times that hourly rate of pay and were further told that they would be required to work for full term of the contract from March through November.

19. Plaintiff relied upon the representations made to him in Mexico and incurred various expenses obtaining his H-2B visa and traveling to the United States to work for Defendants. These expenses included, but were not limited to, the cost of obtaining a Mexican passport, a \$100 visa application fee, a \$100 visa issuance fee, a \$6 border crossing fee, a \$155 administrative fee paid to Defendants' agent for processing the visa paperwork, and transportation expenses from the point of recruitment to the place of work in the United States.

20. On information and belief, other H-2B workers employed by Defendants during 2003, 2004, 2005 and 2006 relied on the promises made to them in Mexico and incurred similar visa, processing and transportation expenses in order to get to the United States to work for Defendants.

21. Plaintiff had to pay for his return transportation to Mexico and, on information and

belief, most, if not all, of the other H-2B workers employed by Defendants in 2003, 2004, and 2005 paid for their own return transportation to Mexico. On information and belief, Defendants will require H-2B workers employed in 2006 to pay for their return transportation to Mexico.

22. All of the expenses outlined in paragraphs 19, 20, and 21 were primarily for the benefit and convenience of Defendants.

23. As a matter of practice or policy uniformly applied to all of their H-2B workers, Defendants did not take into account the expenses set forth in paragraphs 19 and 20 in determining whether their H-B workers employed during the relevant time period received the wages required by the Fair Labor Standards Act during the first work week.

24. As a matter of practice or policy uniformly applied to all of their H-2B workers employed during the relevant time period, Defendants did not take into account the expenses set forth in paragraph 21 in determining whether their H-2B workers employed during the relevant time period received the wages required by the Fair Labor Standards Act during the worker's last week of work. On information and belief, Defendants do not intend to take into account the expenses of return transportation in calculating the last week's wages of H-2B workers employed in 2006.

25. The expenses outlined in paragraph 19 and 20 operated as *de facto* deductions from the first week's wages of Plaintiff and other H-2B workers causing them to earn less than the wages required by the Fair Labor Standards Act.

26. The expenses outlined in paragraph 21 operated as *de facto* deductions from the last week's wages of Plaintiff and other H-2B workers causing them to earn less than the wages required by the Fair Labor Standards Act.

27. Defendants' violations of the Fair Labor Standards Act were willful.

28. Defendants had no intention of paying Plaintiff or other H-2B workers employed during

the relevant time period the hourly and overtime wages promised in Defendants' applications to DOL and CIS or to H-2B workers in Mexico. Nor did Defendants intend to employ Plaintiff or other H-2B workers for the full term of work promised to workers. The representations made to Plaintiff and other H-2B workers regarding wages and the work term were fraudulent and designed for the purpose of inducing them to accept employment with Defendants.

29. Once Plaintiff began work, Defendants paid him using a "Chinese overtime" system. Under this system, Plaintiff was paid a base wage of \$450 per week. This amount was divided by his total hours of work for the week to calculate a regular hourly rate of pay. Plaintiff was then paid one-half of that regular rate as an overtime premium for the hours he worked in excess of 40 in the week. As a result of this pay scheme, the more hours Plaintiff worked per week in excess of 40, the less he was paid per hour and the lower his overtime premium per hour. As a result of this scheme, Plaintiff earned less than the regular and overtime rates promised in Defendants visa applications and less than the rates promised to Plaintiff in Mexico.

30. On information and belief, Defendants other H-2B workers employed during the relevant time period were paid using a similar "Chinese overtime" method and did not receive the hourly and overtime rates promised in Defendants' applications to DOL and CIS or the rates promised to the H-2B workers in Mexico.

31. Defendants constructively terminated Plaintiff prior to the completion of his work contract by failing to pay him the promised wage.

32. On information and belief, Defendants wrongfully terminated or constructively terminated other H-2B workers employed during the relevant time period prior to the completion of their work contracts by, *inter alia*, paying them less than the wage rate promised in order to induce them to accept the job.

FIRST CAUSE OF ACTION

33. The above facts constitute violations of the Fair Labor Standards Act, 29 U.S.C. §§206 and 207, by Defendants for which Plaintiff and other H-2B workers are entitled to relief pursuant to 29 U.S.C. §216(b).

SECOND CAUSE OF ACTION

34. The above facts constitute breach of contract by Defendants for which Plaintiff and other H-2B workers are entitled to relief.

THIRD CAUSE OF ACTION

35. The above facts constitute fraud by Defendants for which Plaintiff and other H-2B workers are entitled to relief.

FOURTH CAUSE OF ACTION

36. The above facts constitute violations of the covenant of good faith and fair dealing by Defendants for which Plaintiff and other H-2B workers are entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- a. Allow Plaintiff to pursue his FLSA claims as a collective action and authorize Plaintiff to issue notice of the right to opt-into this action to all similarly situated H-2B workers;
- b. Certify Plaintiffs breach of contract, fraud and good faith and fair dealing claims as a Rule 23(b)(3) class action on behalf of H-2B workers employed by Defendants;
- c. Award Plaintiff and similarly situated H-2B workers their unpaid minimum wages, regular wages and overtime as well as an equal amount of liquidated damages pursuant to 29 U.S.C. §216(b);
- d. Award Plaintiff and other H-2B workers compensatory damages for Defendants' breach of

contract;

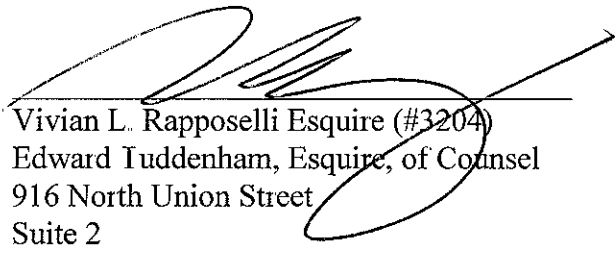
e. Award Plaintiff and other H-2B workers compensatory and punitive damages for Defendants' fraud;

f. Award Plaintiff and other H-2B workers compensatory damages for Defendants violation of the covenant of good faith and fair dealing;

g. Award Plaintiff his costs and reasonable attorneys fees;

h. Award Plaintiff such other and further relief as this Court deems just and proper.

RAPPOSELLI, CASTRO & GONZALES



Vivian L. Rapposelli Esquire (#3204)  
Edward Tuddenham, Esquire, of Counsel  
916 North Union Street  
Suite 2  
Wilmington, Delaware 19805  
(302) 652-8711  
Attorneys for Plaintiff

Dated: 3/16/06

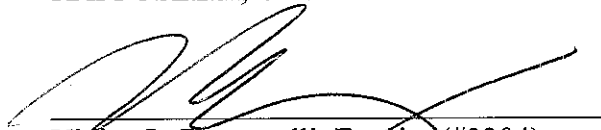


CERTIFICATE OF SERVICE

I, Vivian L. Rapposelli, Esquire, hereby certify that on March 16, 2006, I caused two copies of the foregoing Complaint to be served by first class U.S. Mail, postage pre-paid, on counsel for the parties at the following address:

TruGreen Limited Partners  
c/o Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

RAPPOSELLI, CASTRO & GONZALES



Vivian L. Rapposelli, Esquire (#3204)  
Edward Tuddenham, Esquire, of Counsel  
916 North Union Street, Suite 2  
Wilmington, Delaware 19805  
(302) 652-8711  
Attorneys for Plaintiff

Dated: \_\_\_\_\_

3/16/06

JS 44 (Rev 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Ramon Villanueva - Bazaldúa

(b) County of Residence of First Listed Plaintiff Mexico  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number) (302) 652-8711  
Rapposelli, Castro & Gonzales  
916 N Union St, Ste 2, Wilk, DE 19805**DEFENDANTS**TruGreen Limited Partners and TruGreen, Inc.  
d/b/a TruGreen Chemlawn  
County of Residence of First Listed Defendant New Castle  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PIF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fed. Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. § 201 et seq., 28 U.S.C. § 1367

Brief description of cause:

FLSA claim, breach of contract, fraud and violation of good faith.**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY** N/A

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/16/06

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_